SUBJECT INDEX

PAGE

I.

The question whether the Supreme Court of California interfered unconstitutionally with the jurisdiction granted to the Superior Court and was due process of law thereby denied to appellant under the Fourteenth Amendment of the United States Constitution is a substantial federal question 2

In granting the writ of prohibition the California Supreme Court acted arbitrarily and in violation of the Fourteenth Amendment 7

The federal question is substantial 14

II.

The federal question was properly presented to and passed upon by the state court so as to support the jurisdiction of this court to review the judgment of the state court 15

III.

Reply to Appellee's Contention B 17

Conclusion 22

TABLE OF AUTHORITIES CITED

CASES	PAGE
Agricultural v. Superior Court, 5 Cal. 2d 550	13
American v. McCune, 67 Cal. App. 2d 583	13
Appleby v. City of New York, 271 U. S. 379	20
Bandini v. Superior Court, Los Angeles County, 284 U. S. 8	2
Brinkerhoff v. Hill, 281 U. S. 673	4, 5, 19
Brock v. Superior Court, 11 Cal. 2d 682	13
Buscaglia v. District Court, 145 F. 2d 274	21
Camron v. Kenfield, 57 Cal. 551	7
Carlson v. Curtiss, 234 U. S. 103	15
City of Glendale v. Crescenta, 135 Cal. App. 2d 784	21
Clark v. Cline, 51 S. E. 620	22
Coker v. Superior Court, 58 Cal. 177	8
Cole v. Arkansas, 333 U. S. 196	4
Colma v. Superior Court, 7[illegible] Cal. App. 91	10
Communist Party v. Peek, 20 Cal. 2d 536	12
Coomber v. Getz, 285 U. S. 434	20
Cooke v. Superior Court, 73 Cal. App. 744	9
Crampton v. Zabriskie, 101 U. S. 601	21
Cullinan v. Superior Court, 24 Cal. App. 2d 468	9
Davis v. County of Los Angeles, 12 Cal. 2d 412	12
Fayerweather v. Ritch, 195 U. S. 276	4
Franklin v. Tugwell, 85 F. 2d 208	21
French v. Cleaners, 91 Cal. App. 2d 890	13
Georgia v. Decatur, 295 U. S. 165	4, 13
Grannis v. Ordean, 234 U. S. 385	15, 19
Great Northern v. Sunhurst, 287 U. S. 358	19
Great Northern v. Washington, 300 U. S. 154	15
Griffith v. Dept. Public Works, 141 Cal. App. 2d 376	21
Hevren v. Reed, 126 Cal. 219	8
Hovey v. Elliott, 167 U. S. 409	3

PAGE

International Steel v. Surety Co., 297 U. S. 657 19
Johnston v. Superior Court, 4 Cal. App. 90 8
Larson v. South Dakota, 278 U. S. 429 20
Mahoney v. San Francisco, 201 Cal. 273 22
Marshal v. Standard, 17 Cal. App. 2d 19 22
Maurer v. Mitchell, 53 Cal. 289 7
Merchants v. Richmond, 256 U. S. 635 15
Mines v. De Valle, 201 Cal. 273 22
Missouri v. Gehner, 281 U. S. 313 19
Mobile v. Tennessee, 153 U. S. 486 20
Mock v. Santa Rosa, 126 Cal. 330 21
Myles Salt v. Iberia, 239 U. S. 478 5
N. A. A. C. P. v. Alabama, 357 U. S. 449 3
O'Melveny v. Griffith, 178 Cal. 1 21
Postal Telegraph v. Newport, 247 U. S. 464 ..... 4, 15
Rideout v. City of Los Angeles, 185 Cal. 426 12
Russel v. Sebastian, 233 U. S. 197 20
Saunders v. Shaw, 242 U. S. 1165 16
Saunders v. Shaw 244 U. S. 317 19
Schaefer v. Berinstein, 140 Cal. App. 2d 278 21
Scott v. Neal, 154 U. S. 34 6
Shelley v. Kraemer, 334 U. S. 1 5
Tracy v. Ginzburg, 205 U. S. 170 5
Trickey v. City of Long Beach, 101 Cal. App. 2d 871 22
Truax v. Corrigan, 257 U. S. 312 17
United States Alkali Assn. v. United States, 325 U. S. 20 7
Wreden v. Superior Court, 55 Cal. 504 10

STATUTES

California Constitution, Article VI, Section 5 12
Code of Civil Procedure, Section 562(a) 21
United States Constitution, Article I, Section 10 ..... 17, 18
United States Constitution, Fourteenth Amendment 2, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 155

LOUIS KIRSHBAUM,

Appellant,

vs.

THE CITY OF LOS ANGELES, including members of City Council, City Clerk, and Mayor,

LOS ANGELES DODGERS,

Appellees.

On Appeal From the Supreme Court of the State of California.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

Appellees move to dismiss the appeal upon the ground that the federal questions sought to be raised by appellant are unsubstantial.

The motion is without merit. The federal questions were decided in a manner in conflict with the decisions of this Court.

I.

The Question Whether the Supreme Court of California Interfered Unconstitutionally With the Jurisdiction Granted to the Superior Court and Was Due Process of Law Thereby Denied to Appellant Under the Fourteenth Amendment of the United States Constitution Is a Substantial Federal Question.

In the jurisdictional statement appellant emphasized that he has raised a question of judicial interference by the issuance of the writ of prohibition which strikes at the very essence of due process of law.

Appellee's reply that this is a claim that the California Supreme Court misinterpreted its power under the State Constitution to issue writs of prohibition. Appellee argues that there is nothing in the clauses of the Fourteenth Amendment guaranteeing due process which converts an issue respecting the jurisdiction of a state court into anything other than a question of state law. Such a decision, appellee claims, is binding on this court.

In *Bandini v. Superior Court, Los Angeles County*, 284 U. S. 8, just as in this case prohibition was sought to restrain the Superior Court from enforcing a preliminary injunction. Conversely to the legal situation here, there the petitioner attacked the jurisdiction of the Superior Court upon the ground of the *invalidity* of an oil conservation statute. (In the present case the jurisdiction of the Superior Court was attacked on the ground the ordinance was valid on its face.)

In holding that this court has jurisdiction this court acknowledged that under California law the writ of prohibition is not available as a substitute for appeal from

a court having jurisdiction, also that if the Superior Court of the County has jurisdiction to entertain the action it has the power to define the right to be protected. This court said:

> "If the judgment of the Superior Court be incorrect, it may be reversed on appeal but not on prohibition."

This court added:

> "It follows that in considering and deciding federal questions in the prohibition proceeding, the District Court of Appeal must be regarded, as its opinion imports, as having determined merely that the statute was valid upon its face so that the Superior Court had jurisdiction to entertain the injunction suit. It is that determination alone we can now consider."

This court has on numerous occasions reviewed the decision of a state court where in violation of state constitutional limitations the state court itself has denied due process of law:

> *N. A. A. C. P. v. Alabama*, 357 U. S. 449, 456, 457, 458 ("Novelty in procedural requirements cannot be permitted to thwart review in this court applied for by those who in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights");
>
> *Hovey v. Elliott*, 167 U. S. 409, 417, 419 (holding that due process was denied a defendant whose answer was struck leading to a decree without a hearing on the merits);

Postal Telegraph v. Newport, 247 U. S. 464, 475 (holding that an erroneous decision by the State Supreme Court on the doctrine of *res judicata* was not binding on the United States Supreme Court where the application was inconsistent with due process of law);

Cole v. Arkansas, 333 U. S. 196, 201 (where provision is made by State Constitution for an appeal to a State Supreme Court and on that appeal the court considers questions raised under the Federal Constitution, the proceedings in that court are a part of the process of the law to which appellant was protected under the Fourteenth Amendment);

Fayerweather v. Ritch, 195 U. S. 276 (a judgment of a state court can be reviewed by this court on error on the ground that although the forms of law were observed, it necessarily operated to wrongfully deprive a party of due process of law);

Brinkerhoff v. Hill, 281 U. S. 673, 682 ("While it is for the state courts to determine the adjective as well as the substantive law of the state, they must in so doing accord the parties due process of law");

Georgia v. Decatur, 295 U. S. 165, 171 ("The refusal of a court to receive or consider any proof whatever on the subject amounts to a denial of a hearing on that issue, in contravention of the due process clause of the Constitution");

Shelley v. Kraemer, 334 U. S. 1 ("The action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment");

Brinkerhoff v. Hill, 281 U. S. 673, 680 ("The Federal guaranty of due process extends to state action through its judicial as well as its legislative, executive or administrative branch of government").

In *Tracy v. Ginzburg*, 205 U. S. 170, the Supreme Court announced the exception under which decisions of a State Supreme Court may be reviewed when concerned with the construction of a state constitution or statute. The court said:

> "Within the meaning of that Amendment, a deprivation of property without due process of law occurs when it results from the arbitrary exercise of power, inconsistent with 'those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.' . . ."

In *Myles Salt v. Iberia*, 239 U. S. 478, the Supreme Court said:

> "It is true the law of the state as written is not attacked, but the law as administered and justified by the Supreme Court of the State is attacked, and

it is asserted to be a violation of the Constitution of the United States. The question presented is Federal and a motion to dismiss is denied."

In *Scott v. Neal*, 154 U. S. 34, 46, the Supreme Court said:

"The words 'due process of law' when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this Court, 'means a course of legal proceedings according to these rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution—that is by the law of its creation—to pass upon the subject matter of the suit.

* * * * * * * *

"(In the *Ahn* case the defendant's sole reliance was upon a deed from an administrator, acting under the orders of a court which had no jurisdiction to appoint him, or to confer any authority upon him as against the plaintiff.) (Plaintiff by writ of error assigned for error that the probate proceedings were without jurisdiction over the subject matter and absolutely void, that the judgment of the superior court and the supreme court of the state affirming that judgment deprived him of his property without due process of law and were contrary to the 14th Amendment of the Constitution of the United States.)

* * * * * * * *

"The question whether the process thus sanctioned by the court of last resort of the State constitutes

due process of law within the meaning of the 14th Amendment being properly presented to this court for decision, it must exercise an independent judgment upon it."

In Granting the Writ of Prohibition the California Supreme Court Acted Arbitrarily and in Violation of the Fourteenth Amendment.

The traditional use of the writ of prohibition both at common law and in the Federal courts has been, in appropriate cases, to confine inferior courts to the exercise of their prescribed jurisdiction or to compel them to exercise their authority when it is their duty to do so. (*United States Alkali Assn. v. United States*, 325 U. S. 201, 203.)

The writs may not be used as a substitute for an authorized appeal. (325 U. S. 201, *supra.*)

The California Supreme Court has held that even the *Legislature* could not constitutionally extend the office of the writ of prohibition beyond its scope at common law. The court in *Camron v. Kenfield*, 57 Cal. 551, upheld the contention that it was not competent for the Legislature by extending the office of the writ to enlarge the jurisdiction of the Supreme Court.

In *Maurer v. Mitchell*, 53 Cal. 289, 291, the California Supreme Court concluded that the writ of prohibition referred to in the California Constitution was the same writ known to the common law.

The Supreme Court in interpreting the scope of the writ then said:

> "Nor does the language of sec. 1102 of the Code of Civil Procedure require of us to hold that the office of the writ has been extended, or that it should not issue in cases in which it could not have been

resorted to prior to the statute. The full text of that section is as follows: 'The writ of prohibition is the counterpart of the writ of mandamus. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.'

". . . The word 'jurisdiction,' when used in connection with 'prohibition,' would be at once understood as being employed in the sense of the legal power or authority 'to hear and determine causes.'

". . . In prohibition it must be shown to the Court that the inferior Court or person *has* exceeded the powers conferred by law, and the Court interferes to prevent further proceedings without or in excess of such power." (Emphasis by the Court.)

In *Coker v. Superior Court*, 58 Cal. 177 (1881), the California Supreme Court interpreted the function of the writ of prohibition as follows:

"A writ of prohibition is a preventive, not a remedial process. It can not be used to take the place of an appeal, or writ of certiorari, or other mode of review. Whenever any of these remedies is available prohibition can not be resorted to."

"It is only in cases where the inferior tribunal is about to do some act unauthorized by law that the writ will lie." (*Heeren v. Reed*, 126 Cal. 219, 222.)

In *Johnston v. Superior Court*, 4 Cal. App. 90 (1906), the limitations upon the part of a reviewing court to issue prohibition was held to exclude cases amounting to no more than "a mere error reviewable and correctible

through the ordinary remedy of appeal." The court also said that prohibition could not be invoked for the purpose of "obviating the effect of rulings made by a court engaged in issues over which it has undoubted jurisdiction."

The court added:

> "To tolerate such a practice would be subversive of the purpose of the writ which is to restrain inferior tribunals and bodies from inflicting wrong under the guise of jurisdiction or authority which has no potential existence. It would invite intolerable delay and annoyance in every case where a jurisdictional question might perchance be incidentally involved, and make this prerogative writ the medium through which appellate courts could exercise supervisory control over inferior tribunals acting within the scope of their legitimate powers."

In *Cooke v. Superior Court*, 73 Cal. App. 744 (1925), prohibition was sought to prohibit the superior court from further hearing a proceeding in habeas corpus involving custody of a child. In denying the writ the appellate court said:

> ". . . It follows that prohibition does not lie to prevent that tribunal from exercising, in that respect, its lawful jurisdiction. . . . Prohibition is not available to restrain a subordinate court from deciding erroneously."

In *Cullinan v. Superior Court*, 24 Cal. App. 2d 468, 478, the Appellate Court, in denying a writ of prohibition, said:

> "Mere errors or irregularity of procedure may not be corrected by means of the writ of prohibition. It is said in 50 Corpus Juris, page 676, Section 43:

"'Prohibition does not lie to correct or restrict errors or irregularities of a tribunal which is acting within its jurisdiction, although proceeding improperly in the exercise of that jurisdiction. The remedy cannot be used to supersede the ordinary functions of an appeal or writ of error, except as it may be permitted by statute. Where the inferior court or tribunal has jurisdiction of the person and the subject matter, prohibition does not lie to prevent an erroneous decision, or to prevent the enforcement of an erroneous judgment. Where the existence of jurisdiction depends on controverted facts which the inferior court or tribunal is competent to determine, prohibition does not lie, even though the lower tribunal may in such case err in its determination of the question.'"

In the case of *Wreden v. Superior Court*, 55 Cal. 504, it is said:

"'The mere fact, if such were the fact, that a court is about to act erroneously or irregularly in a matter of which it has jurisdiction, will not warrant the issuance of a writ of prohibition. Such a writ cannot be used to prescribe what a court shall or shall not consider in a matter before it and within its jurisdiction, any more than a writ of mandate can be used to compel a court how or what to decide. To do either would be to interfere with the judicial functions of a court.'"

In *Colma v. Superior Court*, 75 Cal. App. 91 (1925), an application for a writ of prohibition to prevent the superior court from ordering the substitution of a personal for a surety bond was denied. The appellate court stating:

"(1) By virtue of section 1057 of said Code of Civil Procedure the superior court is expressly vested

with jurisdiction to entertain and to grant a motion for substitution of a new bond upon certain grounds. Its authority therefore to decide such a motion correctly or incorrectly is beyond question. Assuming then, as petitioner contends, that said court intends to and will decide such motion erroneously, it follows that its action in that respect would amount to no more than error committed in the exercise of its jurisdiction (*Department of Public Works v. Superior Court*, 197 Cal. 215), and it is well settled that a writ of prohibition is not available to restrain the commission of error."

In the petition for a rehearing filed with the Supreme Court of California appellant Kirshbaum argued:

"To extend the application of prohibition to the present case will invade and divest a court of general jurisdiction from its constitutionally granted powers to hear a cause on its merits and within the jurisdiction granted to it. It will deny to a superior court the right to grant a temporary injunction until it will have determined the validity of legal issues on both law and fact which was within its exclusive province. It will deny to the plaintiff in the case below the due process of the law of a full and fair hearing on the merits, and of the right to a decision by a court vested with the power to determine the questions of fact and law involved.

"It will permit an indirect attack on the findings and judgment of a trial court in a case involving one or more disputed questions of fact.

"It will permit a judgment in a separate action to be indirectly attacked by prohibition in a subsequent

separate proceeding altho the right of appeal exists and is being taken.

"It will prejudice the right of the plaintiff in case 699077 to avail himself of the presumptions and the inferences available on appeal.

"The peremptory writ issued in this case unless vacated will divest the superior court of its constitutionally granted power to hear and determine issues of law properly within its jurisdiction, and to maintain the status quo pending a decision on the merits. By so doing the due process of law guaranteed to all persons under the United States Constitution will have been impaired."

Due process of law was denied appellant by the action of the Supreme Court of California in violation of the United States Constitution by granting prohibition directed against a case within the lawful jurisdiction of the Superior Court. The Superior Court possessed original equity jurisdiction to determine the validity of the referendum election. (Cal. State Const., Art. VI, Sec. 5.)

The California Supreme Court has heretofore construed this power to include jurisdiction by superior courts to determine the validity of elections. (*Rideout v. City of Los Angeles*, 185 Cal. 426; *Davis v. County of Los Angeles*, 12 Cal. 2d 412, 426; *Communist Party v. Peek*, 20 Cal. 2d 536, 556.)

The writ of prohibition prevented appellant from proceeding to a trial on the merits before the Superior Court. It thereby prevented the introduction into evidence in the referendum case of the legal objections appellant had against the validity of the ordinance.

Although the California Supreme Court announced that it would consider the evidence presented in the former

case, actually appellant was prevented from introducing *in the referendum case* additional evidence to substantiate the claimed invalidity of the proposed contract and ordinance.

As stated in the case of *Georgia v. Decatur*, 295 U. S. 165, 171, *supra*, a refusal of a court to receive or consider any proof on a subject amounts to a denial of a hearing on that issue in contravention of the due process clause of the Constitution.

Similarly a court violates due process of law if it grants prohibition in a case involving a disputed question of fact. (*Brock v. Superior Court*, 11 Cal. 2d 682; *Agricultural v. Superior Court*, 5 Cal. 2d 550; *French v. Cleaners*, 91 Cal. App. 2d 890, 898, 899; *American v. McCune*, 67 Cal. App. 2d 583.)

After acknowledging appellant's contention that the Supreme Court had no power to issue prohibition in a case involving a disputed question of fact, the California Supreme Court determined that neither the first case that had been completed or the pending referendum case presented a "substantial question of fact upon a material issue."

In addition to its disregard of the numerous factual contentions advanced by appellant in his brief in opposition to the issuance of prohibition, and again in the petition for a rehearing (pp. 22-25), the California Supreme Court also ignored the trial court's references to the following issues of fact:

(1) that the City Council had the right to sell the land only if it "*properly determined*" that it was no longer required for the use of the City (J. S. Appx. p. 22);

(2) that the declaration in the ordinance ("whereas the land is no longer required for the use of the city") was not in accordance with the *facts recited* (J. S. Appx. pp. 24-25);

(3) concerning the recital in the ordinance that the City is in the process of acquiring additional property and such property is no longer required for the use of the City, the trial court had said, "... the finding of the legislative body is not conclusive and that the court *may examine the facts* to determine whether there has been an abuse of discretion or an illegal expenditure of public funds or that the action is ultra vires" (J. S. Appx. p. 28);

(4) whether the land the City proposes to buy and immediately convey to the Ball Club *was being acquired for a public purpose* (J. S. Appx. pp. 29-34);

(5) the factual interpretation to be given the words "proper condition" (J. S. Appx. pp. 36-37).

These issues are questions of fact and were in issue in the referendum case.

The decision of the California Supreme Court unconstitutionally enlarging its own jurisdiction, and in thereafter unlawfully interfering with the jurisdiction granted by state constitution to a Superior Court, has denied to appellant the due process of law protected by the Fourteenth Amendment of the United States Constitution.

The Federal Question Is Substantial

Appellee argues that a disagreement with the State Supreme Court's appraisal of the record before it does not present a federal question of substance.

Where a federal right has been denied, this Court may re-examine a finding of fact or a unified finding of fact and law made by a state court. (*Great Northern v. Washington*, 300 U. S. 154, 165; 166, 167; *Carlson v. Curtiss*, 234 U. S. 103, 106; *Postal Telegraph v. Newport*, 247 U. S. 464, 473; *Merchants v. Richmond*, 256 U. S. 635, 683.)

II.

The Federal Question Was Properly Presented to and Passed Upon by the State Court so as to Support the Jurisdiction of This Court to Review the Judgment of the State Court.

In *Grannis v. Ordean*, 234 U. S. 385, 394, a motion to dismiss an appeal to the United States Supreme Court on the ground that the Federal question was not properly raised in the state court. In denying the motion, the Supreme Court said:

> "This motion must be denied. It is true that until the decision of the supreme court of the state, the Federal right was not clearly asserted. But it was not infringed in the trial court, which held in favor of the contention of defendant (now plaintiff in error) that the decree in the partition suit was not valid because of the insufficiency of the notice to Geilfuss. It was the decision of the supreme court, upholding the notice, that first ran counter to the alleged Federal right. In a petition for reargument, filed by the now plaintiff in error, it was suggested that the necessary effect of the decision was to deprive him of his property without due process of law, contrary to the 14th Amendment. The supreme court entertained the petition, considered and over-

ruled the contention that petitioner's righs under the Amendment were infringed, declared that its decision was to be interpreted as holding against the contention, and therefore refused a reargument. This is sufficient to confer jurisdiction upon this court."

In *Saunders v. Shaw*, 242 U. S. 1165, this Court said:

"The question remains whether the writ of error can be maintained. The record discloses the facts but does not disclose the claim of right under the 14th Amendment until the assignment of error filed the day before the chief justice of the state granted this writ. Of course, ordinarily that would not be enough. But when the act complained of is the act of the supreme court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was heard, and therefore was not bound to ask a ruling or to take other precautions in advance. The denial of rights given by the 14th Amendment need not be by legislation. *Home Teleph. & Teleg. Co. v. Los Angeles*, 227 U. S. 278. It appears that shortly after the supreme court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the chief justice of the state by his assignment of errors. We do not see what more he could have done."

In *Truax v. Corrigan*, 257 U. S. 312, 329, the Supreme Court said:

> "In cases brought to this court from state courts for review, on the ground that a Federal right set up in the state court has been wrongly denied and in which the state court has put its decision on a finding that the asserted Federal right has no basis in point of fact, or has been waived or lost, this court, as an incident of its power to determine whether a Federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here."

III.

Reply to Appellee's Contention B.

(Questions 4 and 6 concerning the so-called "Public Purpose" restriction and its contemplated removal.)

Appellee argues that question 6 was not timely raised. (Did the City Council and its Mayor violate Article I, Section 10, of the United States Constitution, in adopting an ordinance which approves the extinguishment of a public purpose deed restriction thus constituting an impairment of contract as against the beneficiaries of the contract, to wit, the citizens of the municipality?)

Appellee argues that appellant did not raise this question in his points and authorities in opposition to the Petition for Prohibition.

The first indication that appellant had that the California Supreme Court intended to adjudicate the validity of the ordinance on its merits in the prohibition proceed-

ing was at the oral argument before the Supreme Court [Clk. Tr. Vol. I, Tr. of oral argument, p. 44].

The Supreme Court then indicated it desired briefs on the question as to the validity of the ordinance.

Appellant at the oral argument requested permission to file with the Supreme Court a copy of his trial brief and the reporter's transcript of all of the evidence introduced in Superior Court Case No. 699077, and the clerk's transcript containing the original petition and points and authorities. This request was granted [Clk. Tr. Vol. I, Tr. of oral argument p. 41]. There was thereafter submitted to the Supreme Court the reporter's transcript. The reporter's transcript contains repeated argument by counsel for appellant of the alleged violation of Article I, Section 10, of the United States Constitution [Rep. Tr. pp. 272-279 Vol. II, Clk. Tr.]. The points and authorities attached to the petition similarly contain the challenge of unconstitutionality as to impairment of contract [P and A, pp. 28-30, attached to petition case 699077, Vol. II, Clk. Tr.]. Appellant's trial brief was attached in the appendix to Appellant's Brief in Opposition to the Application for Prohibition.

The brief corresponded to the instructions of the Supreme Court to point out wherein questions of fact were involved in case 699077.

Appellant was not required to assume that the Supreme Court in violation of established legal procedures would invade the constitutionally granted jurisdiction of a Superior Court by granting prohibition or that the court would disregard the judgment already then lawfully entered by the Superior Court.

Contrary to appellee's argument that appellant filed no answer to the petition for prohibition, appellant filed points

and authorities in opposition to the petition. In those points and authorities appellant pointed out that a judgment had already been rendered declaring the proposed contract to be illegal and void.

Since the Supreme Court did not have the lawful authority to interfere with that judgment in a prohibition proceeding, appellant did not anticipate that the Supreme Court would by an enlargement of its jurisdiction attempt to do indirectly by a collateral attack on a completed judgment that which it could not lawfully do directly.

There was therefore no occasion for appellant in his initial reply to appellee's application for prohibition to set up the unconstitutionality of the ordinance. A court of competent jurisdiction had already done so after a contested trial.

Upon the first indication that the California Supreme Court had ignored the judgment in case number 699077 and had made an adjudication in the prohibition proceedings as to the validity of the ordinance, appellant proceeded to more formally present the federal questions by petition for rehearing.

It was not until the California Supreme Court had in complete disregard of the provisions of the state constitution, and of the established law of the state ousted the Superior Court of its lawful jurisdiction directly in case 703023 and indirectly in case 699077 that appellant was required to present the federal questions.

Under similar circumstances this has been held to be timely. (*Saunders v. Shaw*, 244 U. S. 317; *Missouri v. Gehner*, 281 U. S. 313, 320; *Brinkerhoff v. Hill*, 281 U. S. 673, 677, 678; *Grannis v. Ordean*, 234 U. S. 385, 392; *International Steel v. Surety Co.*, 297 U. S. 657, 665; *Great Northern v. Sunhurst*, 287 U. S. 358, 367.)

Appellee argues that appellant's question four expressly proceeds on the assumption that the deed prohibits the city from conveying such land to a private corporation for private use.

Whether the deed is a contract, what is its proper construction, and was its obligation impaired are questions that this court may answer independently of the conclusion of the state court. (*Appleby v. City of New York*, 271 U. S. 379; *Russel v. Sebastian*, 233 U. S. 197; *Mobile v. Tennessee*, 153 U. S. 486, 493; *Larson v. South Dakota*, 278 U. S. 429, 433; *Coomber v. Getz*, 285 U. S. 434.)

That it was not the intent to permit a resale to a private party is established by the congressional act which permitted the sale at bare land cost if it were purchased by the city with the federal government then absorbing the loss in the differential between the total acquisition cost and the selling price amounting to a sum in excess of four million dollars.

The Independent Offices Appropriation Act of 1954 which authorized this sale also provided that if the lands were not purchased by a public agency in that event the land was to be sold at public auction.

The housing officials insisted that the original escrow agreement which did not contain the public purpose deed restriction be amended to include such a restriction.

The council was informed of this demand and adopted an ordinance approving the purchase subject to the public purpose deed restriction.

The deed was submitted to the public housing authority before being filed in escrow, and the deed restriction was specifically approved.

It would indeed be difficult to find a transaction where a grantor tried more carefully to insure that a deed restriction be provided for in the public interest and the public welfare.

Appellee argues that appellant has also failed to show any justiciable right as to which he is entitled to seek protection under the Constitution of the United States.

Appellee states that a taxpayer has no vested or proprietary interest in public funds in property. The case of *City of Glendale v. Crescenta*, 135 Cal. App. 2d 784 cited by Appellee recognizes that taxpayers may sue to prevent misapplication of city funds or properties. A taxpayer has the right to enjoin the illegal use of municipal funds or property.

Code Civ. Proc., Sec. 562(a);

Buscaglia v. District Court, 145 F. 2d 274;

Franklin v. Tugwell, 85 F. 2d 208;

Crampton v. Zabriskie, 101 U. S. 601 (of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property holders of the county may otherwise be compelled to pay, there is at this day no serious question")

Griffith v. Dept. Public Works, 141 Cal. App. 2d 376;

Mock v. Santa Rosa, 126 Cal. 330;

O'Melveny v. Griffith, 178 Cal. 1;

Schaefer v. Bernstein, 140 Cal. App. 2d 278;

Mines v. De Valle, 201 Cal. 273;

Clark v. Cline, 51 S. E. 620;

Mahoney v. San Francisco, 201 Cal. 273;

Marshal v. Standard, 17 Cal. App. 2d 19;

Trickey v. City of Long Beach, 101 Cal. App. 2d 871.

Conclusion.

For all the foregoing reasons appellant respectfully submits that the motion to dismiss should be denied.

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